

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Document # 16

U.S.C.A. # \_\_\_\_\_

U.S.D.C. # 07-cv-6048

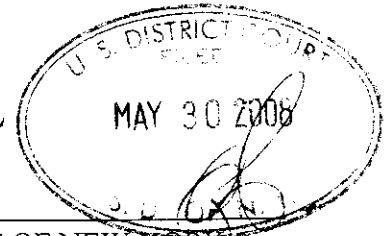
JUDGE: NRB

DATE: MAY 30, 2008

Cephas  
-v-

Ercole

INDEX TO THE RECORD ON APPEAL



PREPARED BY (NAME): THOMAS R. PISARCZYK  
FIRM: U.S. DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK  
ADDRESS: 500 PEARL STREET, ROOM 370  
NEW YORK, NEW YORK 10007  
PHONE NO.: (212) 805 - 0636

DISTRICT COURT DOCKET ENTRIES -----

DOCUMENT DESCRIPTION	DOC. #
<u>CLERK'S CERTIFICATE</u>	_____
<u>SEE ATTACHED LIST OF NUMBERED DOCUMENTS</u>	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(☒) Original Record

(☐) Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.  
for the Second Circuit on the 30<sup>TH</sup> Day of May, 2008.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----  
Cephas  
-v-  
Ercole  
-----

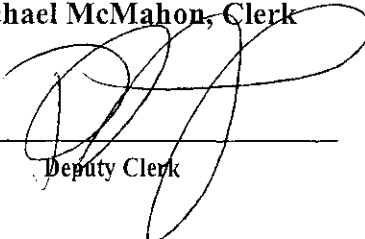
U.S.C.A. # \_\_\_\_\_  
U.S.D.C. # 07-cv-6048  
JUDGE: NRB  
DATE: MAY 30, 2008

**Clerk's Certificate**

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through 15, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

<u>Date Filed</u>	<u>Document Description</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 30<sup>TH</sup> Day of May In this year of our Lord, Two Thousand and Eight, and the Independence of the United States this 232<sup>ND</sup> year.

**J. Michael McMahon, Clerk**  
By   
Deputy Clerk

APPEAL, CLOSED, HABEAS, PRO-SE

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:07-cv-06048-NRB**  
**Internal Use Only**

Cephas v. Ercole  
Assigned to: Judge Naomi Reice Buchwald  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 06/26/2007  
Date Terminated: 04/29/2008  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus (General)  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
06/26/2007	<u>1</u>	ENDORSEMENT on Declaration in Support of Request to Proceed In Forma Pauperis, I.F.P. REQUEST IS GRANTED. (Signed by Judge Kimba M. Wood on 6/26/7) (laq) (Entered: 07/03/2007)
06/26/2007	<u>2</u>	PETITION FOR WRIT OF HABEAS CORPUS pursuant to 28 U.S.C. 2254. Document filed by Herbert Cephas.(laq) (Entered: 07/03/2007)
06/26/2007		Magistrate Judge Ronald L. Ellis is so designated. (laq) (Entered: 07/03/2007)
07/19/2007	<u>3</u>	APPLICATION for an order to Appoint Counsel pursuant to 18 U.S.C. 3006(A)(g) (Habeas Corpus Petition). Document filed by Herbert Cephas.(pl) (Entered: 07/25/2007)
08/16/2007	<u>4</u>	ORDER denying 3 Application to Appoint Counsel pursuant to 18 U.S.C. 3006(A)(g)(Habeas Corpus Petition). (Signed by Judge Naomi Reice Buchwald on 8/14/07) copies sent by chambers.(cd) (Entered: 08/16/2007)
08/16/2007	<u>5</u>	ORDER the Clerk of Court shall serve a copy of this Order, Petition, and Memorandum of Law by certified mail, upon the Attorney General of the State of New York, and shall also send a copy of this Order, by certified mail, upon Herbert Cephas. Respondent shall file a response to the petition on or before 10/5/2007, and petitioner's reply thereto, if any, is due on or before 11/5/2007. (Signed by Judge Naomi Reice Buchwald on 8/14/2007) (tve) (Entered: 08/31/2007)
08/31/2007		Mailed a copy of 5 Order to Answer, to Herbert Cephas by Certified Mail # 7001 2510 0002 8738 0776 with Return Receipt Requested. (tve) (Entered: 09/04/2007)
08/31/2007		Mailed a copy of 5 Order to Answer, 2 Petition for Writ of Habeas Corpus to the Attorney General of the State of New York by Certified Mail # 7001 2510 0002 8738 0769 with Return Receipt Requested. (tve) (Entered: 09/04/2007)
09/14/2007		Received Return Receipt of Mail Order by Certified Mail as to Herbert Cephas, which was served by Certified Mail # 7001 2510 0002 8738 0776, on 9/12/07. (pl) (Entered: 09/14/2007)
10/01/2007	<u>6</u>	ENDORSED LETTER addressed to Judge Naomi Reice Buchwald from Priscilla Steward dated 9/28/2007 re: Counsel for respondent respectfully request an extension of time to respond to the petition for a writ of habeas corpus from October 5, 2007 to December 7, 2007. ENDORSEMENT: So Ordered. Robert Ercole answer due 12/7/2007. (Signed by Judge Naomi Reice Buchwald on 10/1/2007) (jmi) (Entered: 10/02/2007)
12/04/2007	<u>7</u>	ENDORSED LETTER addressed to Judge Naomi R. Buchwald from Priscilla Steward dated 12/3/07 re: counsel for respondent requests a brief extension of time until 12/19/07 to complete the Attorney General's response to the habeas corpus petition. ENDORSEMENT: So Ordered. (Signed by Judge Naomi Reice Buchwald on 12/3/07) (dle) (Entered: 12/04/2007)
12/19/2007	<u>8</u>	STATE COURT TRANSCRIPT of proceedings in the Supreme, County of Bronx, Case Number 5473/01, held on December 6, 2001 before Judge Edward McLaughlin.(dj) (Entered: 12/21/2007)
12/19/2007	<u>9</u>	DECLARATION of Priscilla Steward in Opposition re: 2 Petition for Writ of Habeas Corpus. Document filed by Robert Ercole. (dj) (Entered: 12/21/2007)
12/19/2007	<u>10</u>	MEMORANDUM OF LAW in Opposition re: 2 Petition for Writ of Habeas Corpus. Document filed by Robert Ercole. (dj) (Entered: 12/21/2007)
02/06/2008	<u>11</u>	ENDORSED LETTER addressed to Judge Naomi Reice Buchwald from Herbert Cephas dated 1/8/08 re: requesting an extension of time in the amount of 60 days to prepare and file a reply to Respondent's answer. ENDORSEMENT: An extension of sixty (60) days until March 24, 2008 is granted for this petitioner to reply to respondent's answer. (Signed by Judge Naomi Reice Buchwald on 2/5/08) (mr) (Entered: 02/07/2008)
04/01/2008	<u>12</u>	REPLY in response to Respondent's answer due December 19, 2007. Document filed by Herbert Cephas. (jmi) (Entered: 04/03/2008)
04/29/2008	<u>13</u>	MEMORANDUM AND ORDER Cephas's petition for habeas corpus relief is DENIED. As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. 2253 (c). In addition, we certify that any appeal from this decision would not be taken in good faith. See 28 U.S.C. 1915 (a)(3). (Signed by Judge Naomi Reice Buchwald on 4/29/2008) Copies Mailed By Chamber.(jmi) (Entered: 04/29/2008)
04/29/2008		Transmission to Judgments and Orders Clerk. Transmitted re: 13 Order, to the Judgments and Orders Clerk. (jmi) (Entered: 05/07/2008)
05/08/2008	<u>14</u>	CLERK'S JUDGMENT That for the reasons stated in the Court's Memorandum and Order dated April 29, 2008, the petition for a writ of habeas corpus is denied; the Court finds that because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue; the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from the Memorandum and Order dated April 29, 2008 would not be taken in good faith. (Signed by J. Michael McMahon, clerk on 5/8/08) (Attachments: # 1 notice of right to appeal)(ml) (Entered: 05/08/2008)
05/20/2008	<u>15</u>	NOTICE OF APPEAL from 14 Clerk's Judgment. Document filed by Herbert Cephas. Copies mailed to attorney(s) of record: Attorney General, NYS.(tp) (Entered: 05/29/2008)

05/20/2008	Appeal Remark as to 15 Notice of Appeal filed by Herbert Cephas. \$455.00 APPEAL FEE DUE. IFP REVOKED 4/29/08. COA DENIED 4/29/08. (tp) (Entered: 05/29/2008)
05/29/2008	Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 15 Notice of Appeal. (tp) (Entered: 05/29/2008)
05/29/2008	Transmission of Notice of Appeal to the District Judge re: 15 Notice of Appeal. (tp) (Entered: 05/29/2008)